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Attorney for Plaintiffs
Montana Environmental Information Center
and Sierra Club

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

MONTANA ENVIRONMENTAL
INFORMATION CENTER, and SIERRA CLUB,

Plaintiffs,

v.

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Defendant,

and

WESTERN ENERGY COMPANY,

Defendant-Intervenor.

NANCY SWEENEY
CLERK DISTRICT COURT

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BY ISSUED
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FEB 17 2015

Case No.: CDV 2012-1075

AFFIDAVIT OF STEVE GILBERT IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT AND
BRIEF IN SUPPORT PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT

I, Steve Gilbert, hereby state as follows:

1. My name is Steve Gilbert. I reside in Helena, Montana. I am a citizen of the United States and am over 18 years of age. I am a member of the Montana Environmental Information Center (MEIC).

2. I have been a Montana resident since 1967. For forty-one of these years I have worked as a biological consultant. For twenty-five years I was part-owner and president of an environmental consulting company that specialized in wildlife, aquatics/fisheries, soils, vegetation, forestry, range and hydrology. Separate from my business, I worked in Yellowstone Park on grizzly bears and studied cliff-nesting falcons in Glacier Park. I am an associate with the Montana Peregrine Institute, and have conducted neo-tropical bird and raptor surveys in Montana and other parts of the west nearly every year since 1971.

3. I am a strong environmental advocate and have served for a number of years on the boards of various conservation groups in Montana, including MEIC. I was chosen MEIC Community Activist of the Year in 2003. I have testified in the Montana Legislature and the U.S. Senate on water and air quality, soils, aquatics, and wildlife habitat issues relating to irresponsible energy development, coal and hard-rock mines.

4. I was a professional licensed Montana fly fishing guide for 20 years. During those years, I guided on nearly every trout stream of note in Montana. I was an Orvis endorsed guide for many years and National Guide of the Year in 1990.

5. I have worked and/or played in all 56 Montana counties and every mountain range, wilderness area and national park in the state. I have skied and walked through the Bob Marshall and Scapegoat Wilderness, the Mission Mountain Wilderness, Bitterroot-Selway Wilderness, Absaroka-Beartooth Wilderness, and into every corner of Yellowstone and Glacier Parks. I have paddled thousands of miles of Montana's spectacular canoe waters.

6. I presently do some biological consulting. I retired in early 2012 as the state non-motorized trails specialist for Montana Fish, Wildlife and Parks. As such, I helped administer the federally-funded \$1.5 million Recreational Trails Program and inspected trails projects funded by the program, walking many miles a year in the back country. I also worked part-time with the Land and Water Conservation Fund and inspected projects funded by the fund in every county of the state.

7. I am also the father of two adult children. I spend lots of time each fall filling freezers with elk, deer, waterfowl and upland game birds.

8. I have conducted biological research in the Tongue River Valley from 1977 to 1986, and during this time, I spent numerous days in the Colstrip area hunting upland birds, particularly along East Fork Armells Creek, Cow Creek, Green Leaf Creek and Rosebud Creek. In this same period I also wrote the wildlife biology report for the EIS on Area D of the Rosebud Mine and spent time in the field near Colstrip in preparation for writing. While there, I observed East Fork Armells Creek, Cow Creek, and Rosebud Creek. At first glance, these appear to be pretty southeastern Montana creeks, but they have taken an unnecessary beating from industrial development. It is unfortunate that these creeks have been sacrificed to the degree that they have.

9. During the past ten years, I spent numerous days in and around Colstrip performing Land and Water Conservation Fund inspections on between 15 and 20 projects. Over the past 36 years, I have driven through and around Colstrip at least annually for work, recreation, or as a board member of conservation organizations. I expect to continue to visit the Colstrip area at least on an annual basis in the coming years. As I drive through the area, I will observe the countryside and creeks and streams, including East Fork Armells, Cow Creek, and Rosebud Creek.

10. All of my many experiences with the creeks, streams, and rivers near Colstrip occurred after coal mining had begun. Thus I had low aesthetic expectations, which were all too easily met. I have observed the pits of the Rosebud Mine that swallow the upper reaches of East Fork Armells Creek. I am also familiar with the documentation of the contamination and impairment of East Fork Armells Creek by the Rosebud Mine. In particular, I know that the Montana Department of Environmental Quality has determined that the upper and lower reaches of East Fork Armells Creek are impaired, that the creek does not support healthy assemblages of aquatic life, and that one cause of the impairment is the strip-mining operation at the Rosebud Mine. I am also aware that the Western Energy Company, which operates the strip-mine, has on multiple occasions violated its pollution discharge limits for boron, iron, sulfates, total suspended solids, and total dissolved solids.

11. Because of my awareness of the pollution from the Rosebud Mine and the Colstrip Power Plant—including specifically water pollution from the mine and the fact that the mine has impaired the downstream receiving waters—it is extremely difficult for me to have positive recreational or aesthetic experiences in the outdoors near Colstrip. While there is some exceptionally beautiful country near Colstrip, my aesthetic experience is always compromised by the industrial development of the Rosebud Mine and Colstrip Power Plant. I love to hunt, fish, and hike in southeast Montana, activities I have done annually since 1977, and I would love to be able to do so in and near Colstrip, and along East Fork Armells Creek, Cow Creek, Rosebud Creek and their tributaries downstream from the Rosebud Mine; however, I am discouraged from doing so because of my concerns about the pollution from the mine and power plant, including specifically water pollution from the Rosebud Mine. The concern about water pollution in these

creeks from the Rosebud Mine diminishes my aesthetic enjoyment of the creek and the surrounding area.

12. There is also an ever-present concern that when I drink water in a Colstrip restaurant or in the home of nearby ranchers, I may be drinking water that has been contaminated by mining at the Rosebud Mine or power generation at the power plant. This concern with groundwater pollution lessens my aesthetic appreciation for the area and discourages me from recreating in the area.

13. While there is some exceptionally beautiful country near Colstrip, my aesthetic experience of East Fork Armells Creek, Cow Creek, Rosebud Creek and the area surrounding Colstrip is always compromised by the industrial development there, including the Rosebud Mine. I have hunted, fished, and hiked in southeast Montana annually since 1977. Most recently, I hunted upland birds along East Fork Armells Creek, Rosebud Creek, and Cow Creek five to ten miles downstream from the Rosebud strip-mine in December 2014. I plan to continue to hunt, fish, and hike in southeast Montana. I also plan to visit people in and around East Fork Armells Creek, Cow Creek, Rosebud Creek, Colstrip, and the Rosebud Mine. I would like to recreate around East Fork Armells Creek, Cow Creek, Rosebud Creek, and the Colstrip area; however, the continued air and water pollution from the mine and power plant will likely continue to impact my recreational interest in and aesthetic appreciation of the area. Because of this, I am less likely to recreate in the area. It is not a positive thing to say that one's low aesthetic expectations are not likely to be met there, but they are. This would be different if it were not for the significant pollution, including water pollution from the mine, in the area.

14. I am also concerned that the Montana Department of Environmental Quality does not always work for the best interests of the people of Montana. Somehow, it seems DEQ has lost

track of its mission to protect and enhance a clean and healthful environment for present and future generations of Montanans. Instead, DEQ seems to think its mission is to make things easier for industry to poison and destroy the air, water, soil, fish and wildlife habitat. Unless there are watchdog organizations, DEQ and the Rosebud Mine will continue to destroy everything they touch.

15. Montana's Constitution recognizes all citizens fundamental civil right to a clean and healthful environment. It is the responsibility of both DEQ and private industry, such as the Western Energy Company, to assure that their actions do not violate or lessen this right. WECO's continued discharge of pollution into the already impaired waters of East Fork Armells Creek and the tributaries of Rosebud Creek, and DEQ's failure to impose proper limits on this pollution violate my constitutional right to a clean and healthful environment.

16. If DEQ complies with the law prior to issuing any discharge permit to the operator of the Rosebud Mine and ensures that no illegal pollution is discharged into East Fork Armells Creek and its tributaries, my aesthetic and recreational concerns will, to some degree, be reduced. If DEQ complies with the law and imposes lawful limits on water pollution from the Rosebud Mine, the violation of my fundamental civil right to a clean and healthful environment will also be remedied, at least partially.

I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, the foregoing is true and correct. 28 U.S.C. § 1746.

Dated this 13th day of February 2015

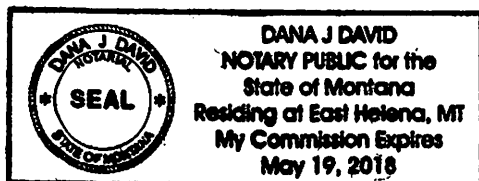


Steve Gilbert

Subscribed and sworn to me by

Steve Gilbert

this 13 day of February 2015.



[Signature]

Notary Public for the State of Montana
My commission expires: